

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EBER G. RUTH,

Plaintiff,

v.

WARDEN, et al.,

Defendants.

No. 1:23-cv-00747-ADA-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF'S MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

(ECF Nos. 2, 7)

Plaintiff Eber G. Ruth is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 23, 2023, the Magistrate Judge issued findings and recommendations, recommending that the Court deny Plaintiff's request to proceed in forma pauperis because he has three "strikes" within the meaning of 28 U.S.C. § 1915(g). (ECF No. 7.) The Magistrate Judge also found that Plaintiff's complaint failed to allege that he faced an "imminent danger" that would qualify him for the exception to § 1915(g). (*Id.*) Rather than file objections, Plaintiff filed an interlocutory appeal to the Ninth Circuit. (ECF No. 8.) After the Ninth Circuit dismissed Plaintiff's appeal, (ECF No. 11), the Magistrate Judge re-set the deadline for Plaintiff to file objections to the findings and recommendations. (ECF No. 12.) That deadline has passed, and Plaintiff has not filed any objections.

1 Even if the Court construes the contents of Plaintiff's interlocutory appeal as an objection
2 to the findings and recommendations, nothing in that interlocutory appeal convinces the Court
3 that the Magistrate Judge erred. Plaintiff's interlocutory appeal states in a conclusory fashion that
4 his prior "strikes" were not frivolous and that he is in imminent danger. Such conclusory
5 statements do not suffice to bypass the gatekeeping function of § 1915(g).

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
7 de novo review of this case. Having carefully reviewed the entire file, the Court concludes that
8 the findings and recommendations are supported by the record and proper analysis.

9 Accordingly,

- 10 1. The findings and recommendations issued on May 23, 2023, (ECF No. 7), are
11 adopted in full;
- 12 2. In accordance with 28 U.S.C. § 1915(g), Plaintiff's application to proceed in forma
13 pauperis, (ECF No. 2), is denied; and
- 14 3. Within **twenty-one (21) days** following the date of service of this order, Plaintiff
15 shall pay the \$402.00 filing fee in full to proceed with this action. If Plaintiff fails
16 to pay the filing fee within the specified time, this action will be dismissed without
17 further notice.

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19 IT IS SO ORDERED.

20 Dated: August 17, 2023



UNITED STATES DISTRICT JUDGE

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